

Uniform Partition of Heirs Property Act vs. Current Montana Law

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NOTE: Enacting the Uniform Partition of Heirs Property Act (UPHPA) will NOT repeal the current Montana partition law. Rather, UPHPA will apply only for a small subset of partition actions – those involving Heirs' Property.

Heirs' Property is real property held in tenancy-in-common when:

1. There is no written agreement among the cotenants governing partition; and
2. One or more of the cotenants acquired title from a relative, either living or deceased; and
3. Any of the following applies:
  - a. 20% or more of the interests are held by cotenants who are relatives;
  - b. 20% or more of the interests are held by an individual who acquired title from a relative; or
  - c. 20% or more of the cotenants are relatives.

If the property to be partitioned is Heirs' Property, UPHPA applies unless all of the cotenants agree otherwise. All other property is governed by the current Montana statute on partitions.

	Montana Code Title 70, Chapter 29	UPHPA
Who may file for partition?	Any cotenant	Same as current law.
Who must receive notice of a partition action?	All parties with an interest in the land, including lienholders of record.	Same as current law.
How to provide notice to unknown and out of state parties?	By publication which includes a brief description of the property.	Same as current law, plus notice must also be posted on the property by means of a conspicuous sign.
How is the land's fair market value determined?	Not necessary to determine value until sold at auction.	The court must order an appraisal from a disinterested, licensed appraiser, unless the parties waive this right or the court determines the cost of appraisal outweighs its evidentiary value.
May a cotenant request buyout by the other cotenants?	Not governed by statute. Any cotenant may sell his or her interest to other cotenants in a private transaction if the parties agree on a price.	Any cotenant except the cotenant requesting partition may offer to buy the interest of the cotenant requesting partition at the appraised value. Existing cotenants have a right of first refusal, 45 days to exercise their right, and another 60 days to arrange financing.
What if parties cannot agree on a buyout price?	The court must order partition-in-kind unless the property is so situated that partition-in-kind cannot be made without great prejudice to the owners.	Same as current law, except UPHPA lists the factors a court must consider when deciding whether partition-in-kind would result in great prejudice: <ol style="list-style-type: none"> <li>1. Whether the property can practicably be divided;</li> <li>2. Whether the aggregate fair market value would be materially less after partition;</li> <li>3. The collective duration of ownership by cotenants and their relatives;</li> <li>4. A cotenant's sentimental attachment to the property for ancestral value or other special reasons;</li> </ol>

		<ol style="list-style-type: none"> <li>5. The lawful use of the property by a cotenant and the potential harm if that cotenant could not continue the lawful use of the property;</li> <li>6. The degree to which cotenants have contributed their pro-rata share of property expenses or have contributed to the physical improvement and upkeep of the property; and</li> <li>7. Any other relevant factor.</li> </ol>
If the court orders partition-by-sale, what are the terms of the sale?	Sale at public auction to the highest bidder.	<ol style="list-style-type: none"> <li>1. The court must order an open market sale unless the court finds that a sale by sealed bids or by auction would be more advantageous for the co-tenants as a group.</li> <li>2. The court may hire a broker and set terms of the sale if the cotenants cannot agree.</li> <li>3. The broker must report to the court any offer to purchase the property for the appraised value or more.</li> <li>4. If the broker does not receive an offer for the appraised value within a reasonable time, the court may approve the highest offer received or order sale by sealed bids or at auction.</li> </ol>